

### Remarks

Claims 1-23 are pending in this application. Claims 1-23 are rejected. Claims 1-23 are herein amended. The Examiner has rejected claims 1-23 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,609,213 to Nguyen et al. (hereinafter “Nguyen”).

#### **A. Remarks Regarding § 102(e) Rejection of Independent Claims 1, 4, 9, 14, and 19**

Claims 1, 4, 9, 14, and 19 are rejected under 35 U.S.C. § 102(e) as being anticipated by Nguyen (U.S. Patent No. 6,609,213). Applicants respectfully submit that Nguyen does not anticipate the claims.

A prior art patent, publication, or event is for the same “invention,” as that word is used in §102, and therefore anticipating, if the prior art patent, publication or event discloses each and every limitation found in the claims, either expressly or inherently. *Rockwell Intern. Corp. v. Us.*, 147 F.3d 1358, 1363 (Fed. Cir. 1998); *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). Each claim limitation must be found in a single prior art reference; references cannot be combined under §102. *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000). Omission of any claimed element, no matter how insubstantial, is grounds for traversing a rejection based on §102. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983).

The Office Action rejected the Applicants’ argument that Nguyen fails to disclose detecting a failed process on one of said cluster nodes and duplicating said process on said server. (Office Action at 6.) In support of the rejection, the Office Action states that when “the server (14a fig. 2) failed to respond to the heartbeat signal, then the recovery virtual server . . . will be brought online to assume the identity of the failing server . . . .” (*Id.*) However, it is clear

from the Nguyen reference that the servers 14 are not cluster nodes. Nguyen clearly distinguishes between the servers 14 and the cluster server 18. (*See e.g.*, Nguyen, col. 4, lines 41-43 (“Cluster servers 18 may include more than one or two nodes” and that “[c]luster server 18 is communicatively coupled to servers 14 by cluster interconnect 20.”)) Therefore, because the servers 14 are not cluster nodes, it follows by definition that any process that does fail on server 14a cannot be “a failed process on one of said cluster nodes” as required by the claims.

The Nguyen reference also fails to disclose “a server, said server operative with said cluster, said server having one or more virtual nodes, each of said virtual nodes being constructed and arranged to execute said process of said one or more cluster nodes.” Applicants respectfully disagree with the Office Action where it explains how this limitation is disclosed by Nguyen: “if the server (14a fig. 2) failed to response to the heartbeat signal, then the recovery virtual server (44a fig. 2a) will be brought online to assume the identity of the failing server.” (Office Action at 7.) The present invention requires that the server not be a cluster server node. Although this limitation is implicitly disclosed in the specification, Applicants have presently made a clarifying amendment which makes this limitation explicit: “said server is not a cluster node.” However, Nguyen clearly indicates that the recovery groups which take over for the failed server run on the cluster server. Nguyen states that “[t]he clustering software may be used to create a group of virtual servers 44 that reside on the cluster server 18.” (Nguyen, col. 6, lines 4-6.) Because a cluster server takes over for the failing process in Nguyen, it does not disclose resuming a failed process on a server that is not a cluster node, and therefore does not anticipate the present invention.

Finally, Nguyen fails to disclose “if one or more of said cluster nodes fails, then said process of said failed cluster node is transferred to one of said virtual nodes of said server.”

Assuming that the invention of Nguyen would recover from the failure of server 14a as the Office Action suggests, Nguyen does not anticipate the present invention. The present invention requires that 1) the failure occur on a cluster node and 2) that the process be transferred to a virtual node on a server which itself is not a cluster node. In Nguyen, the server 14a is not a cluster node as discussed above in this response. Furthermore, recovery virtual server 44a in Nguyen runs on a cluster server and thus does not meet the requirement of the present invention that the server not be a cluster node. Therefore, Nguyen fails to anticipate the present invention.

**B. Remarks Regarding Rejection of Dependent Claims**

The rejections of dependent claims 2-3, 5-8, 10-13, 15-18, 20-23 will not be discussed individually herein, as each of these claims depends, either directly or indirectly, from an otherwise allowable base claim.

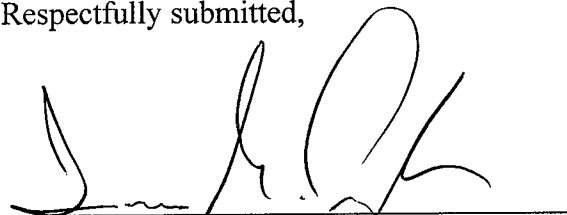
**C. No Waiver**

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants are sufficient to overcome the anticipation rejections.

**Conclusion**

Applicants respectfully submit that the pending claims 1-23 of the present invention, as amended, are allowable. Applicants respectfully request that the rejection of the pending claims be withdrawn and that these claims be passed to issuance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tammy Pennington', is written over a horizontal line.

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